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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 TY MESSERLI, INDIVIDUALLY AND
12 ON BEHALF OF ALL OTHERS
13 SIMILARLY SITUATED,

14 Plaintiff,

15 v.

16 ROOT9B TECHNOLOGIES, INC.,
17 JOSEPH J. GRANO, JR., KENNETH T.
18 SMITH, AND ERIC HIPKINS,

19 Defendants.

Case No:

**COMPLAINT FOR VIOLATION
OF THE FEDERAL
SECURITIES LAWS
JURY TRIAL DEMANDED**

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21
22
23 Plaintiff Ty Messerli ("Plaintiff"), individually and on behalf of all other
24 persons similarly situated, by his undersigned attorneys, for his complaint against
25 Defendants, alleges the following based upon personal knowledge as to himself and
26 his own acts, and information and belief as to all other matters, based upon, *inter alia*,
27 the investigation conducted by and through his attorneys, which included, among
28 other things, a review of the Defendants' public documents, announcements, United

1 States Securities and Exchange Commission (“SEC”) filings, wire and press releases
2 published by and regarding root9B Technologies, Inc. (“root9B” or the “Company”),
3 analysts’ reports and advisories about the Company, and information readily
4 obtainable on the Internet. Plaintiff believes that substantial evidentiary support will
5 exist for the allegations set forth herein after a reasonable opportunity for discovery.

6 **NATURE OF THE ACTION**

7 1. This is a federal securities class action on behalf of a class consisting of
8 all persons other than Defendants (defined below) who purchased or otherwise
9 acquired root9B securities between December 1, 2014 and June 15, 2015, both dates
10 inclusive (the “Class Period”). Plaintiff seeks to recover compensable damages
11 caused by Defendants’ violations of the federal securities laws and to pursue
12 remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the
13 “Exchange Act”) and Rule 10b-5 promulgated thereunder, against the Company and
14 certain of its officers and/or directors.

15 2. root9B provides cybersecurity and regulatory risk mitigation solutions.
16 The Company’s services are divided into three segments: Cyber Solutions, Business
17 Advisory Solutions, and Energy Solutions. Some of root9B’s services include: cyber
18 training capabilities, operational support and analysis, consulting services, and
19 helping clients comply with regulations such as Sarbanes-Oxley Act of 2002
20 (“SOX”), BASEL ACCORDS, the Dodd-Frank Wall Street Reform and Consumer
21 Protection Act.

22 3. Throughout the Class Period, Defendants made materially false and
23 misleading statements regarding the Company’s business and operations.
24 Specifically, Defendants made false and/or misleading statements and/or failed to
25 disclose that: (1) the Company does not have an advanced cyber security product
26 offering, and (2) a substantial portion of the Company’s Cyber Solutions consists of a
27 one-time low margin hardware installation, which the Company is moving away
28 from.

JURISDICTION AND VENUE

4. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act, and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

5. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. § 1331.

6. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b) because root9B conducts business and has an office in this District.

7. In connection with the acts, conduct, and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

8. Plaintiff Ty Messerli, as set forth in the accompanying certification, incorporated by reference herein, purchased root9B securities at artificially inflated prices during the Class Period and has been damaged thereby.

9. Defendant root9B is a Delaware corporation with principal executive offices located in Charlotte, North Carolina. The Company's common stock is listed on OTC under ticker symbol "RTNB."

10. Defendant Joseph J. Grano, Jr. ("Grano") has served as the Company's Chief Executive Officer ("CEO") and Chairman of the Board of Directors throughout the Class Period.

11. Defendant Kenneth T. Smith ("Smith") has served as the Company's CFO throughout the Class Period.

12. Defendant Eric Hipkins ("Hipkins") has served as the director and CEO of the Cybersecurity Solutions division of root9B throughout the Class Period.

13. Defendants Grano, Smith, and Hipkins are sometimes herein collectively referred to as “Individual Defendants.”

14. Defendants root9B, Grano, Smith, and Hipkins are herein referred to as “Defendants.”

SUBSTANTIVE ALLEGATIONS

False and Misleading Statements During the Class Period

15. The Class Period begins on December 1, 2014, when the Company issued a press release entitled “Premier Alliance Re-brands as root9B Technologies (OTCQB: RTNB).” The press release touts root9B’s primary focus on its cyber security business and advanced cyber security product offering, which states in part:

Premier Alliance Re-brands as root9B Technologies (OTCQB: RTNB)

Company to Focus on Cybersecurity and Regulatory Risk Mitigation

New York, NY (Dec. 1, 2014) - Premier Alliance, a leading provider of cybersecurity and regulatory risk mitigation services, is changing its name to root9B Technologies, Inc., and its OTCQB ticker symbol to “RTNB,” effective with the commencement of trading today.

This re-branding initiative is consistent with the Company’s previously announced strategic shift to accelerate the industry-leading capabilities of its wholly-owned cybersecurity subsidiary root9B, and to *focus primarily on cybersecurity and regulatory risk mitigation.*

“We remain focused on providing services for a growing number of clients in the financial, retail, aerospace and government sectors,” said Joe Grano, Chairman and Chief Executive Officer of root9B Technologies (f/k/a Premier Alliance). *“We believe this re-branding effort will help elevate root9B’s profile, and emphasize our expertise, game changing approach, and technological edge to companies, agencies, and governments around the world.”*

(Emphasis added.)

16. On March 30, 2015, the Company filed its Form 10-K for the year ending December 31, 2014 with the SEC (“2014 Form 10-K”), which was signed by Defendants Grano and Smith. With regards to the Company’s Cyber Solution segment, the 2014 Form 10-K stated in relevant part:

Revenue for the CS segment for the year ended December 31, 2014, which is generated from cyber security advisory and technical services, was approximately \$4,076,000, and was almost entirely incremental as compared to the year ended December 31, 2013, and is attributable to the acquisition of root9B, LLC. The CS segment was formed upon the acquisition of root9B, LLC in November 2013, and therefore the revenue during 2013 was not significant. During 2014, the Company invested in building up the CS segment, primarily by hiring new resources with specialized cyber security skills and extending the infrastructure. *The segment continues to ramp up and is planned to be a key revenue growth driver for the Company in 2015 and future years.*

* * *

We have evaluated all of our lines of business both from a historical performance perspective as well as looking at opportunities for future growth. As a result of this evaluation we have launched the repositioning of the Company and adjustment of the Company’s strategy. The repositioning effort included a change of *the business to focus on cyber security and regulatory risk mitigation, renaming the Company “root9B Technologies, Inc.”, and de-emphasizing the Energy Solutions segment by adjusting its focus to operate in support of the Cyber Solutions and Business Advisory Solutions segments*. In addition, our SG&A expenses have substantially increased although our revenues have been declining, as we invest in infrastructure and support for future growth.

* * *

In the latter half of 2014, the Company launched and announced the repositioning of the Company's business and adjustment to its strategy to focus on cybersecurity and regulatory risk mitigation. Effort on the strategic and structural changes to the Company continue. In support of this strategy, in February 2015, the Company acquired IPSA

1 International and expanded capabilities related to regulatory risk
 2 mitigation as discussed previously in “Other Developments”. This
 3 strategic change in focus is driven by several factors: 1) our expertise,
 4 capabilities and proprietary solutions in the cyber security sector, 2) the
 5 growing opportunity related to cyber security, regulation and risk as
 6 indicated above, and 3) our overall ineffectiveness related to our targeted
 7 energy solutions. *We believe the demand for cyber security expertise
 8 and solutions will grow substantially and that this will continue to
 9 cause change related to solutions and regulation. root9B, our cyber
 10 security segment is differentiated in four ways.* First, we have attracted
 11 many of the country’s most highly recognized subject matter experts,
 12 most of whom have served within the National Security
 13 Agency. Second, *root9B has proprietary hardware and software
 14 designed to combat the new methodologies being utilized by state-
 15 sponsored and sophisticated individual hackers. Third, root9B utilizes
 16 an advanced integrated strategy known as active adversarial
 17 pursuit that employs HUNT capabilities, in which cyber threats are
 18 identified before or during an attack rather than discovering the attack
 19 after it has taken place. We believe this approach represents a game
 20 changer in cyber defense.* During 2015 we are building an Adversarial
 Pursuit Operations Center to expand our ability to deliver these services
 as well as continuing to develop our proprietary products. Fourth,
 root9B is known for its training curriculum and capabilities regarding
 cyber security. The ongoing trend regarding cyber security is also
 moving into the regulatory/compliance arena beyond what it has
 traditionally been. *We see these trends being a good fit for our
 business model although we cannot assure that we can fully take
 advantage of the same.*

21 (Emphasis added).

22
 23 17. On May 12, 2015, the Company issued a press release entitled “root9B
 24 Uncovers Planned Sofacy Cyber Attack Targeting Several International and
 25 Domestic Financial Institutions.” The press release touts root9B’s cybersecurity
 26 services and how it prevented a devastating hack of U.S. financial institutions by
 27 Russian hackers. The press release states:
 28

1 New York, NY (May 12, 2015) - root9B, *a root9B Technologies*
 2 *company (OTCQB: RTNB), a leading provider of advanced*
 3 *cybersecurity services and training for commercial and government*
 4 *clients, announced today that it had uncovered plans by the Sofacy*
 5 *group (APT28), a known Russian hacking organization, to target*
 6 *several international financial institutions.*

7 While performing surveillance for a root9B client, *the company*
 8 *discovered malware generally associated with nation state attacks. It is*
 9 *the first instance of a Sofacy or other attack being discovered,*
 10 *identified and reported before an attack occurred.*

11 *“Our team did an amazing job of uncovering what could have been a*
 12 *significant event for the international banking community,” said Eric*
 13 *Hipkins, root9B Chief Executive Officer. “We’ve spent the past three*
 14 *days informing the proper authorities in Washington and the UAE, as*
 15 *well as the CISOs at the financial organizations.”*

16 The banks identified as potential targets in the pending attack are TD
 17 Bank, Bank of America, UAE Bank, and other organizations including
 18 the United Nations Children’s Fund, United Bank for Africa and
 19 Regions Bank.

20 “While none of the targeted organizations are clients of root9B, we felt it
 21 imperative to disclose the findings to them, and as broadly as possible to
 22 the security community,” said Hipkins. *“In previous instances, attacks*
 23 *have been dissected after the event. Our HUNT platform delivers a*
 24 *pro-active defense protection capability to identify, pursue and mitigate*
 25 *cyber threats. This is a first in our industry.”*

26 The full report can be downloaded via this
 27 link: <https://tinyurl.com/nc9k68w>

28 (Emphasis added).

18. The statements referenced in ¶¶15-17 above were materially false and/or
 misleading because they misrepresented and failed to disclose the following adverse
 facts pertaining to the Company’s business, which were known to Defendants or

recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) the Company does not have an advanced cyber security product offering, and (2) a substantial portion of the Company's Cyber Solutions consists of a one-time low margin hardware installation, which the Company is moving away from.

The Truth Begins To Emerge

19. On May 20, 2015, cybersecurity expert Brian Krebs published the article entitled "Security Firm Redefines APT: African Phishing Threat" on his website *Krebsonsecurity.com*. The article discusses root9B's Cyber Solutions and the claims the Company made in its May 12, 2015 press release. The article states in relevant part:

A security firm made headlines earlier this month when it boasted it had thwarted plans by organized Russian cyber criminals to launch an attack against multiple US-based banks. *But a closer look at the details behind that report suggests the actors in question were relatively unsophisticated Nigerian phishers who'd simply registered a bunch of new fake bank Web sites.*

The report was released by Colorado Springs, Colo.-based security vendor root9B, which touts a number of former **National Security Agency** (NSA) and **Department of Defense** cybersecurity experts among its ranks. The report attracted coverage by multiple media outlets, including, Fox News, Politico, SC Magazine and The Hill. root9B said it had unearthed plans by a Russian hacking gang known variously as the Sofacy Group and **APT28**. APT is short for "advanced persistent threat," and it's a term much used among companies that sell cybersecurity services in response to breaches from state-funded adversaries in China and Russia that are bent on stealing trade secrets via extremely stealthy attacks.

"While performing surveillance for a root9B client, the company discovered malware generally associated with nation state attacks,"

1 root9B CEO **Eric Hipkins** wrote of the scheme, which he said was
 2 targeted financial institutions such as **Bank of America, Regions**
 3 **Bank** and **TD Bank**, among others.

4 “It is the first instance of a Sofacy or other attack being discovered,
 5 identified and reported before an attack occurred,” Hipkins said. “Our
 6 team did an amazing job of uncovering what could have been a
 7 significant event for the international banking community. We’ve spent
 8 the past three days informing the proper authorities in Washington and
 9 the UAE, as well as the CISOs at the financial organizations.”

10 *However, according to an analysis of the domains reportedly used by*
 11 *the criminals in the planned attack, perhaps root9B should clarify*
 12 *what it means by APT. Unless the company is holding back key details*
 13 *about their research, their definition of APT can more accurately be*
 14 *described as “African Phishing Threat.”*

15 *The report correctly identifies several key email addresses and physical*
 16 *addresses that the fraudsters used in common across all of the fake*
 17 *bank domains. But root9B appears to have scant evidence connecting*
 18 *the individual(s) who registered those domains to the Sofacy APT gang.*
 19 Indeed, a reading of their analysis suggests their sole connection is that
 20 some of the fake bank domains used a domain name server previously
 21 associated with Sofacy activity: **carbon2u[dot]com** (warning: malicious
 22 host that will likely set off antivirus alerts).

23 *The problem with that linkage is although carbon2go[dot]com was in*
 24 *fact at one time associated with activity emanating from the Sofacy*
 25 *APT group, Sofacy is hardly the only bad actor using that dodgy name*
 26 *server.* There is plenty of other badness unrelated to Sofacy that calls
 27 Carbon2go home for their DNS operations, including these clowns.

28 *From what I can tell, the vast majority of the report documents*
activity stemming from Nigerian scammers who have been conducting

1 *run-of-the-mill bank phishing scams for almost a decade now and*
 2 *have left quite a trail.*

3 For example, most of the wordage in this report from root9B discusses
 4 fake domains registered to a handful of email addresses, including
 5 “adeweb2001@yahoo.com,” adeweb2007@yahoo.com,” and
 6 “rolexzad@yahoo.com”.

7 *Each of these emails have long been associated with phishing sites*
 8 *erected by apparent Nigerian scammers. They are tied to this*
 9 *Facebook profile for a Showunmi Oluwaseun, who lists his job as CEO*
 10 *of a rather fishy-sounding organization called Rolexzad Fishery Nig. Ltd.*
 11 The domain **rolexad[dot]com** was flagged as early as
 12 2008 by **aa419.org**, a volunteer group that seeks to shut down phishing
 13 sites — particularly those emanating from Nigerian scammers (hence the
 14 reference to the Nigerian criminal code 419, which outlaws various
 15 confidence scams and frauds). That domain also references the above-
 16 mentioned email addresses. Here’s another phishy bank
 17 domain registered by this same scammer, dating all the way back to
 18 2005!

19 **Bob Zito**, a spokesperson for root9B, said “the team stands by the report
 20 as 100 percent accurate and it has been received very favorably by the
 21 proper authorities in Washington (and others in the cyber community,
 22 including other cyber firms).”

23 I wanted to know if I was alone in finding fault with the root9B report,
 24 so I reached out to **Jaime Blasco**, vice president and chief scientist
 25 at **AlienVault** — one of the security firms that first published the initial
 26 findings on the Sofacy/APT28 group back in October 2014. **Blasco**
 27 *called the root9B research “very poor”* (full disclosure: AlienVault is
 28 one of several advertisers on this blog).

29 *“Actually, there isn’t a link between what root9B published and Sofacy*
 30 *activity,” he said. “The only link is there was a DNS server that was*
 31 *used by a Sofacy domain and the banking stuff root9B published. It*

1 *doesn't mean they are related by any means. I'm really surprised that*
 2 *it got a lot of media attention due to the poor research they did, and*
 3 *[their use] of [terms] like 'zeroday hashes' in the report really blew my*
 4 *mind. Apart from that it really looks like a 'marketing report/we want*
 5 *media coverage asap,' since days after that report they published*
 6 *their Q1 financial results and probably that increased the value of*
 7 *their penny stocks."*

8 Blasco's comments may sound harsh, but it is true that **root9B**
 9 **Chairman Joe Grano** bought large quantities of the firm's
 10 stock roughly a week before issuing this report. On May 14, 2015,
 11 root9B issued its first quarter 2015 financial results.

12 There is an old adage: If the only tool you have is a hammer, you tend to
 13 treat everything as if it were a nail. In this case, if all you do is APT
 14 research, then you'll likely see APT actors everywhere you look.

15 (Emphasis added).

16 20. As a result of this partial disclosure, shares of root9B fell \$0.13 per share
 17 or over 5% over the next two days to close at \$2.32 per share on May 21, 2015.

18 21. On June 15, 2015, *SeekingAlpha.com* published an article entitled
 19 "ROOT9: -82.5% Downside On Management Fraud Allegations, Cyber Failure And
 20 Bankruptcy - Strong Sell," which revealed the true nature and prospects of the
 21 Company's Cyber Solutions business, stating in relevant part:

22 Since RTNB's "cyber" product is so obviously a bad joke while the
 23 cyber community and RTNB's employees are publicly upset, I felt
 24 compelled to double check with the company in case I missed something,
 25 how can there be nothing of value at RTNB. I called Ken Smith,
 26 RTNB's CFO to get more perspective on the paltry \$4.07 million in
 27 shrinking, unprofitable cyber revenue and the company's product claims.
 28 *I was told a large portion of "cyber" was actually a one-time low*
margin hardware installation, projects RTNB will be apparently

1 *moving away from going forward so it seems we can expect even more*
 2 *cyber revenue declines.* Best I can tell, another component of revenue is
 3 largely what appears to me an old training and certification service for a
 4 product RTNB acts as a **reseller** for. During our conversation, RTNB's
 5 CFO Ken didn't even seem to know what the product was called!
 6 RTNB's investor presentation is also literally one of the worst
 7 presentations I've ever seen in my life, full of useless blathering about
 8 the "TAM" and listing global issues without discussing what RTNB
 9 actually does in any useful detail and ZERO discussion of any of
 10 RTNB's financials or investment aspects at all!

11 *Doing more work, despite CFO's apparent ignorance and vague*
 12 *company rambling, it appears to me RTNB's cyber claims are also*
 13 *based on a product called Digital Shield, a product RTNB resells, and*
 14 *installs for other companies and municipalities with a price point of*
 15 *\$3,600 - RTNB is going to have to do an impossible amount of*
 16 *reselling this old "training module" to justify the current market*
 17 *capitalization of \$134 million!*

18 In my view, the level of incompetence here even rivals that of The
 19 KEYW Holding Corporation (NASDAQ:KEYW), another company
 20 with incompetent management and a failing cyber product I
 21 previously exposed here. Similarly, it seems clear both KEYW and
 22 RTNB are likely to fail and wipe out their shareholders.

23 (Emphasis added).

24 22. This adverse information caused the price of root9B stock to fall \$0.17
 25 per share or approximately 32% to close at \$1.70 per share on June 15, 2015.

26 23. As a result of Defendants' wrongful acts and omissions, and the
 27 precipitous decline in the market value of the Company's securities, Plaintiff and
 28 other Class members have suffered significant losses and damages.

ADDITIONAL FACTS SUGGESTIVE OF SCIENTER

24. On April 30, 2015, root9B completed a Prospectus filed with the SEC on May 1, 2015 registering 9,878,804 shares of root9B common stock to be sold on the market. The Prospectus identifies the “‘Selling Stockholders’ who are offering to sell up to an aggregate of 9,878,804 shares of root9B Technologies Inc.’s common stock[.]” The Selling Stockholders listed in the Prospectus are insiders including Defendants Grano and Hipkins and their spouses/families:

Selling Stock Holder (2)	Shares of Common Stock Owned Before the Offering	Shares of Common Stock Underlying Warrants Owned Before the Offering	Total Number of Shares of Common Stock and Underlying Warrants to be Offered (1)	Shares of Common Stock and/or Common Stock Underlying Warrants to be Owned After the Offering	Percentage of Common Stock Beneficially Owned After the Offering
Joseph C. Grano and Robert H. Silver, Trustees of The Grano Children’s Trust dtd. December 13, 2012(3)(14)	2,681,613	-	2,681,613	-	0%
Jim Orphanides (3)	1,289,600	-	1,255,000	34,600	0%
Brian King (3)	620,466	-	620,466	-	0%
Centurion Holdings(3)	500,000	-	500,000	-	0%
Anthony Sbledorio (3)	300,000	-	300,000	-	0%
Lindsay McLean (3)	200,000	-	200,000	-	0%
George Pataki (3)	122,000	-	122,000	-	0%
Joseph C Grano(3)	50,000	-	50,000	-	0%
Sam Jurist(3)	49,880	-	49,880	-	0%
Timothy Howell(3)	43,000	-	43,000	-	0%
Heather Payson (3)	30,100	-	30,100	-	0%
Karen Tilli(3)	30,100	12,000	30,100	12,000	0%

1	Colin Milner(3)	21,500	-	21,500	-	0%
	Mark Pando (3)	17,200	-	17,200	-	0%
2	Peter Clarke (3)	-	-	-	-	0%
3	Melissa Robbins(3)	8,600	-	8,600	-	0%
4	Michael Arnstein (3)	8,600	-	8,600	-	0%
	Michael Amicucci(3)	8,600	-	8,600	-	0%
5	Ankur Vishwakarma(3)	8,600	-	8,600	-	0%
6	Carla Short(3)	8,600	-	8,600	-	0%
	Christina Van Tassell (3)	50,000	-	50,000	-	0%
7	Concetta Kristan (3)	50,000	-	50,000	-	0%
8	Eric Hipkins(4)	1,708,948	-	1,698,215	10,733	0%
	Michael Morris(4)	394,889	-	382,497	12,392	0%
9	Eric Fleming (4)	50,000	-	50,000	-	0%
10	James McCarter(4)	51,754	-	50,054	1,700	0%
11	Erika Hipkins(4)	10,179	-	10,179	-	0%
	Greg Morris(5)	4,900	50,000	50,000	4,900	0%
12	Pat Kolenik(5)(11)	185,545	540,000	200,000	525,545	0%
13	Cary Sucoff(5)(12)	90,000	706,440	200,000	596,440	0%
14	Isaac Blech(5)(13)	784,231	450,000	450,000	784,231	1.1%
	Steve Yarbrough (5)		50,000	50,000	-	0%
15	Kevin Carnahan (6)		100,000	100,000	-	0%
16	Proactive Capital		50,000	50,000	-	0%
17	Resources Group					
	LLC(7)(15)					
18	Solit, Tessler & Co		200,000	200,000	-	0%
	LLC(8)(16)					
19	Harvey Pitt (9)		250,000	250,000	-	0%
20	Alliance Advisors		75,000	75,000	-	0%
	LLC(10)(17)					
21	TOTAL	9,378,905	2,483,440	9,879,804	1,982,541	0%

(Emphasis added).

PLAINTIFF'S CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired root9B securities traded on OTC during the Class

1 Period (the “Class”); and were damaged upon the revelation of the alleged corrective
2 disclosures. Excluded from the Class are Defendants herein, the officers and directors
3 of the Company, at all relevant times, members of their immediate families and their
4 legal representatives, heirs, successors or assigns and any entity in which Defendants
5 have or had a controlling interest.

6 26. The members of the Class are so numerous that joinder of all members is
7 impracticable. Throughout the Class Period, root9B securities were actively traded on
8 OTC. While the exact number of Class members is unknown to Plaintiff at this time
9 and can be ascertained only through appropriate discovery, Plaintiff believes that
10 there are hundreds or thousands of members in the proposed Class. Record owners
11 and other members of the Class may be identified from records maintained by root9B
12 or its transfer agent and may be notified of the pendency of this action by mail, using
13 the form of notice similar to that customarily used in securities class actions.

14 27. Plaintiff’s claims are typical of the claims of the members of the Class as
15 all members of the Class are similarly affected by Defendants’ wrongful conduct in
16 violation of federal law that is complained of herein.

17 28. Plaintiff will fairly and adequately protect the interests of the members
18 of the Class and has retained counsel competent and experienced in class and
19 securities litigation. Plaintiff has no interests antagonistic to or in conflict with those
20 of the Class.

21 29. Common questions of law and fact exist as to all members of the Class
22 and predominate over any questions solely affecting individual members of the Class.
23 Among the questions of law and fact common to the Class are:

- 24 • whether the federal securities laws were violated by Defendants’ acts as
25 alleged herein;
- 26 • whether statements made by Defendants to the investing public during the
27 Class Period misrepresented material facts about the business, operations
28 and management of root9B;

- 1 • whether the Individual Defendants caused root9B to issue false and
2 misleading statements during the Class Period;
- 3 • whether Defendants acted knowingly or recklessly in issuing false and
4 misleading statements;
- 5 • whether the prices of root9B securities during the Class Period were
6 artificially inflated because of the Defendants' conduct complained of
7 herein; and,
- 8 • whether the members of the Class have sustained damages and, if so, what
9 is the proper measure of damages.

10 30. A class action is superior to all other available methods for the fair and
11 efficient adjudication of this controversy since joinder of all members is
12 impracticable. Furthermore, as the damages suffered by individual Class members
13 may be relatively small, the expense and burden of individual litigation make it
14 impossible for members of the Class to individually redress the wrongs done to them.
15 There will be no difficulty in the management of this action as a class action.

16 31. Plaintiff will rely, in part, upon the presumption of reliance established
17 by the fraud-on-the-market doctrine in that:

- 18 • Defendants made public misrepresentations or failed to disclose material
19 facts during the Class Period;
- 20 • the omissions and misrepresentations were material;
- 21 • root9B securities are traded in efficient markets;
- 22 • the Company's shares were liquid and traded with moderate to heavy
23 volume during the Class Period;
- 24 • the Company traded on OTC, and was covered by multiple analysts;
- 25 • the misrepresentations and omissions alleged would tend to induce a
26 reasonable investor to misjudge the value of the Company's securities; and
27
- 28

- Plaintiff and members of the Class purchased and/or sold root9B securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

32. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

33. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

FIRST CLAIM

Violation of Section 10(b) Of The Exchange Act Against and Rule 10b-5 Promulgated Thereunder Against All Defendants

34. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

35. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (1) deceive the investing public, including plaintiff and other Class members, as alleged herein; and (2) cause plaintiff and other members of the Class to purchase root9B's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

36. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business that operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for

1 root9B's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5
2 thereunder. All Defendants are sued either as primary participants in the wrongful
3 and illegal conduct charged herein or as controlling persons as alleged below.

4 37. Defendants, individually and in concert, directly and indirectly, by the
5 use, means or instrumentalities of interstate commerce and/or of the mails, engaged
6 and participated in a continuous course of conduct to conceal adverse material
7 information about the business, operations and future prospects of root9B as specified
8 herein.

9 38. These Defendants employed devices, schemes and artifices to defraud,
10 while in possession of material adverse non-public information and engaged in acts,
11 practices, and a course of conduct as alleged herein in an effort to assure investors of
12 root9B value and performance and continued substantial growth, which included the
13 making of, or participation in the making of, untrue statements of material facts and
14 omitting to state material facts necessary in order to make the statements made about
15 root9B and its business operations and future prospects in the light of the
16 circumstances under which they were made, not misleading, as set forth more
17 particularly herein, and engaged in transactions, practices and a course of business
18 that operated as a fraud and deceit upon the purchasers of root9B securities during the
19 Class Period.

20 39. Each of the Defendants' primary liability, and controlling person
21 liability, arises from the following facts: (1) Individual Defendants were high-level
22 executives, directors, and/or agents of the Company during the Class Period and
23 members of the Company's management team or had control thereof; (2) each of
24 these Defendants, by virtue of his responsibilities and activities as a senior officer
25 and/or director of the Company, was privy to and participated in the creation,
26 development and reporting of the Company's financial condition; (3) each of these
27 defendants enjoyed significant personal contact and familiarity with the other
28 defendants and was advised of and had access to other members of the Company's

1 management team, internal reports and other data and information about the
2 Company's finances, operations, and sales at all relevant times; and (4) each of these
3 defendants was aware of the Company's dissemination of information to the
4 investing public which they knew or recklessly disregarded was materially false and
5 misleading.

6 40. Defendants had actual knowledge of the misrepresentations and
7 omissions of material facts set forth herein, or acted with reckless disregard for the
8 truth in that they failed to ascertain and to disclose such facts, even though such facts
9 were available to them. Such Defendants' material misrepresentations and/or
10 omissions were done knowingly or recklessly.

11 41. As a result of the dissemination of the materially false and misleading
12 information and failure to disclose material facts, as set forth above, the market price
13 of root9B's securities was artificially inflated during the Class Period. In ignorance
14 of the fact that market prices of root9B's publicly-traded securities were artificially
15 inflated, and relying directly or indirectly on the false and misleading statements
16 made by Defendants, or upon the integrity of the market in which the securities trade,
17 and/or on the absence of material adverse information that was known to or
18 recklessly disregarded by Defendants but not disclose in public statements by
19 Defendants during the Class Period, Plaintiff and the other members of the Class
20 acquired root9B securities during the Class Period at artificially high prices and were
21 or will be damaged thereby.

22 42. At the time of said misrepresentations and omissions, Plaintiff and other
23 members of the Class were ignorant of their falsity, and believed them to be true.
24 Had Plaintiff and the other members of the Class and the marketplace known the truth
25 regarding root9B financial results, which were not disclosed by Defendants, Plaintiff
26 and other members of the Class would not have purchased or otherwise acquired their
27 root9B securities, or, if they had acquired such securities during the Class Period,
28 they would not have done so at the artificially inflated prices that they paid.

1 proximate result of Defendants' wrongful conduct, Plaintiff and other members of the
2 Class suffered damages in connection with their purchases of the Company's
3 common stock during the Class Period.

4 51. This action was filed within two years of discovery of the fraud and
5 within five years of each Plaintiff's purchases of securities giving rise to the cause of
6 action.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

9 A. Determining that this action is a proper class action, designating Plaintiff
10 as class representative under Rule 23 of the Federal Rules of Civil Procedure and
11 Plaintiff's counsel as Class Counsel;

12 B. Awarding compensatory damages in favor of Plaintiff and the other
13 Class members against all defendants, jointly and severally, for all damages sustained
14 as a result of Defendants' wrongdoing, in an amount to be proven at trial, including
15 interest thereon;

16 C. Awarding Plaintiff and the Class their reasonable costs and expenses
17 incurred in this action, including counsel fees and expert fees; and

18 D. Such other and further relief as the Court may deem just and proper.

19 **JURY TRIAL DEMANDED**

20 Plaintiff hereby demands a trial by jury.

21
22 Dated: June 23, 2015

Respectfully submitted,

23
24 **THE ROSEN LAW FIRM, P.A.**

25 /s/ Laurence Rosen

26 Laurence M. Rosen, Esq. (SBN 219683)

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Counsel for Plaintiff Messerli

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